

***Election/Restrictions***

1. Applicant's election with traverse of claims 22-31 in the reply filed on 11/24/2009 is acknowledged. The traversal is on the ground(s) that claims 32-51 fail to satisfy the independent and serious burden requirements and that claims 22 and 32 recite a frame, reference body and positioning device. This is not found persuasive because claim 22 does not include the sensor or cooking probe limitation as found in claim 32. Therefore, claim 32 is a distinct invention and requires a further burden of search since the scope of the claim is different. Furthermore, claims 22 and 32 may be restricted under the election of species requirement. The reason for the election was given in the previous office action dated 8/26/2009. The grounds of election/restriction are election by original presentation since the amended claims included a distinct invention as described above. Claims 32-51 have been withdrawn from consideration by applicant.

The requirement is still deemed proper and is therefore made FINAL.

***Response to Arguments***

2. Applicant's arguments, see pages 9 and 12, filed 11/24/2009, with respect to claims 22-31 have been fully considered and are persuasive. The double patenting and 112 rejections of claims 22-31 have been withdrawn.

3. Applicant's arguments filed 11/24/2009 have been fully considered but they are not persuasive. See Remarks below.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 22-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer (DE 102 32 904) in view of Klinger (DE 101 19 104).

Kramer teaches:

**Regarding Claim 22:** Fig 1 shows a rack frame with a base 13 and an upper frame with a plurality of insertion levels in a column. A reference body may be any part of the frame since a temperature measurement may be taken. A positioning device 10 is attached by two joining pieces on the back side of the frame which extend vertically.

**Regarding Claim 23:** There is a beam running horizontal at the front lower portion of the frame as shown in Fig 1.

**Regarding Claim 24:** A portion of the horizontal beam is centered in the middle of the rack frame.

**Regarding Claim 25:** A recesses portion is shown at the end of the horizontal beam which is between the vertical rod joining pieces.

**Regarding Claim 26:** Fig 1 shows two tab like holding pieces which extend downward from the recess to hold the horizontal beam.

**Regarding Claims 27-29:** Fig 2 shows a sleeve with a coating and a granulate or sand filled sleeve.

Kramer fails to teach:

**Regarding Claims 30 and 31:** The sensor.

Klinger teaches:

**Regarding Claims 30 and 31:** A temperature sensor 8 which is connected to a reference body in the vertical tray arrangement.

In view of the teachings of Klinger it would have been obvious to one of ordinary skill in the art at the time of the invention to include the sensor with the teachings of Kramer since Klinger teaches a temperature sensor connected to the vertical tray arrangement for measuring the temperature within the cooking device.

#### **REMARKS**

In regards to applicants arguments on page 10 of the reply regarding the reference body not being shown. Since it is not specified what the reference body consists of and how it works and part of the rack frame in Kramer may be used as a reference to measure temperature. Regarding the positioning device, there are several devices

which act as positioning devices. The vertical rods hold the horizontal beam in places as well as the tabs at the front of the frame, both of these as well as the top 10 may be considered positioning devices.

Regarding applicant's arguments on page 11 reply referencing the Klinger reference. The trays are attached to the frame when inserted. The claim does not state how they are attached. Since the trays are touching the frame and held in place by the frame they are considered attached.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN JENNISON whose telephone number is (571)270-5930. The examiner can normally be reached on M-Th 9:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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4/1/2010

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